The Commonwealth of Massachusetts

THE IMPACT OF THE MASSACHUSETTS DRUNK DRIVING LAW:

ONE YEAR LATER

A Report by the
Senate Committee on Post Audit and Oversight

Senator Louis P. Bertonazzi, Chairman

The Commonwealth of Massachusetts

SENATE COMMITTEE ON POST AUDIT AND OVERSIGHT

Room 314, State House Boston, MA 02133

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MASSACHUSETTS SENATE

The Honorable William M. Bulger
President of the Senate

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FOREWORD

Last January, the Senate Committee on Post Audit and Oversight released a report updating the status of drunk driving under a new law which had been in effect since September, 1982. At that time, the report concluded that the law, attendant media attention, and enforcement efforts were making major inroads in combating drunk driving in Massachusetts. Arrest rates were continuing to climb and alcohol-related fatalities had decreased to a record low. Chief among the major outstanding concerns was the constitutionality of the treatment of second offenders. Additional issues were the inflexibility of the new federal law authorizing new drunk driving enforcement funds, concerns about the viability of the 14-day residential treatment program for second offenders, and inconsistent application of the law among the District Courts.

On June 7, 1983, the Massachusetts Supreme Judicial Court ruled in favor of the constitutionality of the Committee's original legislation. Specifically, any driver who chose to go to an alcohol education program as an alternative to a conviction on a first offense would be considered a second offender if convicted again within six years. Under the law, second offenders face a mandatory penalty of either a week in jail or two weeks' incarceration in a residential alcohol rehabilitation facility.

The purpose of this report is to call attention to the successes and failures of the first year's experience with the Massachusetts drunk driving law. There is no question that the law is working, that an impact has been felt, and that major progress is being made in controling the drunk driver. The 14-day treatment program is quite successful and currently operating at full occupancy with plans for expansion. As well, there has been increasing consistency among the district courts in their application of the drunk driving statute. Regarding the federal initiative announced last October, it is instructive to note that since that time only two states, Delaware and North Dakota, have qualified for federal funds,

suggestive of the sleight-of-hand economic policies of the Reagan administration.

In this report, the Committee reviews the Commonwealth's performance under the drunk driving law in the following areas:

- drunk driving arrests and alcohol-related fatalities;
- roadblocks and police deployment;
- judicial response to the new drunk driving statute;
- jail overcrowding and the drunk driver;
- the 14-day treatment program for the second offenders;
- the first offender program; and
- the federal Alcohol Safety Incentive Grant Program.

Undoubtedly, there has been vast improvement in the ways the Commonwealth has addressed the threat to public safety represented by the drunk driver. However, the data presented in this report disclose some disturbing trends. Of critical concern is the 8% rise in nighttime fatal crashes occuring between 6:00 pm and 6:00 am, through July 31st of this year. The reason for our concern is based on compelling evidence that the great majority of alcohol-related fatalities occur during these hours. Moreover, our data for the same seven-month period also disclose a 17.5% rise in fatal crashes during the even more critical period between midnight and 3:00 am.

Arrest data is also disturbing. Following major yearly increases in the number of drunk driving arrests going back at least ten years, the number of such arrests has leveled off. During the first six months of 1983, arrests for drunk driving were virtually the same as those that occurred during the first six months of 1982. While some may interpret a stagnant arrest rate as an indication that fewer drunk drivers are on the road, the data reviewed for this report do not allow for such a simple conclusion. Being barely at the national norm for drunk driving arrests is not a signal that the job is done, especially in light of the increase in nighttime fatal crashes.

The newest weapon in the war against drunk driving has been the recent use of roadblocks. While the enduring effectiveness of the roadblocks should be evaluated, there is little doubt that they have generated some measure of deterrence. Police supervisors report a noticeable and positive change in driving behaviour. Further, since good weather and a strong economy resulted in more people on the road, we might very well have experienced an even higher fatality rate were it not clear that

this administration was going to be tough on drunk driving. However, the roadblocks should not be considered a panacea. In comparison with other states using similar roadblock techniques, the number of arrests in Massachusetts is abnormally low.

While concern is justified, this report discusses a number of factors which give us sustained confidence in both the value of the law and police enforcement techniques. Further, the increase in nighttime fatal crashes should be examined in the context of why the number of such crashes was so low last year. That dramatic reduction--21% below the previous year--was most likely a function of the enormous publicity attending the debate around and passage of the new law. Understandably, we have experienced a withering effect from that first flood of public outrage and media attention. A review of the most recent work by H. Laurence Ross, an internationally recognized expert in this area, reinforces this finding:

> "Ross concludes that increases in the potency of legal threat, particularly enhancement of the perceived certainty of apprehension among the population, does produce a significant decline in drunk driving, but that such effects are temporary. He suggests that this evanescense is due to the erosion after a short time of perceived certainty of punishment, since efforts at enforcement can rarely achieve or maintain the level that is initially assumed or mandated."[14]

This report describes the effects of the Massachusetts drunk driving law over the past year and proposes a set of administrative and statutory remedies where appropriate. On balance, these remedies clarify and strengthen rather than change and reform. Despite these remedies, the law can only be effective if there is a sustained commitment by law enforcement agencies to enforce it and by the legislature to oversee its implementation. This is not the type of issue that can be addressed by passing a law and then walking away from it.

Louis P. Bertonazzi

LOUIS P. BERTONAZZI
Chairman
Senate Committee on Post Audit
and Oversight

TABLE OF CONTENTS

I. ENFORCEMENT EFFORTS AND ALCOHOL-RELATED FATALITIES

Last January, the Committee issued its report, Driving Under In Massachusetts: The First 100 Days, and highlighted the efforts of Massachusetts police to suppress drunk driving. Part of what was said then bears repeating:

> The focus on arrest rates is justified, because the absence of an adequate number of arrests cripples the ability of the state to achieve a climate of general deterrence. Stiffer penalties alone cannot achieve the desired goal of discouraging drunken drivers from getting behind the wheel of the car. Fear of arrest can only be engendered if a sufficient number of actual arrests occur. Like it or not, unless the police actively intervene and make known their presence by making a sufficient number of arrests, the goal of general deterrence will not be achieved. All parts of the system must work together, but the police have the pivotal role of playing the first line of defense. Without evidence of police efforts, there is little for the drunk driver to fear. Thus, improved police performance - not only this year but over the past six years - should be recognized and applauded.[23]

In this report, the Committee emphasizes that the good work of the past year must not only continue but that additional arrests must occur. Having achieved the national norm of ten arrests per 1,000 licensed drivers is not a benchmark that should signify that the job is done.

A. Performance Measures: Arrests and Fatalities

Throughout the literature on the effectiveness of drunk driving laws--which is referenced extensively in the Committee's earlier reports[22/23]--the key performance measures are recognized to be nighttime fatal crashes and arrest rates. These reports documented the major strides the Commonwealth has made since the mid-1970's. Historically, the Commonwealth had been well below the national average in

arresting drunk drivers, and it was only in 1982 that the state finally achieved the national average of ten arrests per 1,000 licensed drivers.

However, changes in both the arrest rate and the number of nighttime fatal crashes over the first half of 1983 have raised some concerns. As the Committee's earlier reports documented, between 1975 and 1980, drunk driving arrests increased by an average of 9.8% per year. In 1982, the number of drunk driving arrests increased by 16% over 1981, a certain result of public outrage, recognition of drunk driving as a major threat to public safety, and the debate surrounding the new law. In contrast, drunk driving arrests increased only 1.2% between January and June of 1983 as compared to the same period in 1982.

Of equal concern is the fact that the number of nighttime fatal crashes for the first seven months of 1983 have increased 8% over the first seven months of 1982. Moreover, during the critical period between midnight and 3:00 am, there was a 17.5% increase in fatal crashes over the prior seven-month period. Trend lines in nighttime fatal crashes (6:00 PM - 5:59 AM) are particularly pertinent in measuring alcohol-related crashes and are universally recognized as a valid surrogate.

NIGHTTIME FATAL CRASHES:
January - July: 1982-1983

Time Period	1982 January - July	1983 January - July
6:00 pm - 6:59 pm	9	19
7:00 pm - 7:59 pm	17	13
8:00 pm - 8:59 pm	18	15
9:00 pm - 9:59 pm	16	17
10:00 pm - 10:59 pm	14	20
11:00 pm - 11:59 pm	28	26
Midnight - 12:59 am	22	39
1:00 am - 1:59 am	28	37
2:00 am - 2:59 am	30	18
3:00 am - 3:59 am	13	14
4:00 am - 4:59 am	5	2
5:00 am - 5:59 am	7	3
	207	223

It must be recognized that the recent increase in nighttime fatal crashes has occurred not only in Massachusetts but nationwide. Highway safety analysts believe that one of the major causes of the recent increase in highway deaths is the resurging national economy of the past year. They suggest that during the prior recession, there was less recreational driving, and in particular, less driving by teenagers. As well, last winter was one of the mildest on record, which many surmise resulted in many more people on the road.[15] In support of these arguments, state revenues from the tax on the sale of alcoholic beverages were off 2.5% from July 1, 1981 to July 1, 1982, as were motor fuel tax revenues, down 6.9%.

One very positive note is the fact that over the recent July 4th weekend, nighttime fatal crashes were at a record low for the past decade.[16] This is attributed to the well-publicized efforts of Governor Dukakis and Secretary of Public Safety Charles Barry. Indeed, officials from the Office of Public Safety report that the roadblock supervisors noted substantial changes in driving behavior.

In this regard, Governor's Anti-Crime Council Committee on Drunk Driving reports that "more women were driving while their male companions who had been drinking were in the passenger seat. At one roadblock site situated opposite a restaurant, several patrons asked to make telephone calls for rides home after dinner and drinks. At another location frequented by youths who in previous years drank at the beach and drove home, reports were that they either stayed at the beach or with friends living on the beach rather than driving home drunk."[16]

While the Committee recognizes that it is unrealistic to expect reductions in fatal crashes every year, the increase in nighttime crashes, especially during the high risk time period, coupled with the decrease in the arrest rate, prompts the Committee to express its concerns by urging public safety officials to reinvigorate their patrol and deterrence tactics.

DRUNK DRIVING ARRESTS BY COURT
JANUARY - JUNE 1982/1983:
A COMPARISON

Court Name	Drunk Driving Arrests Jan - June 1982	Drunk Driving Arrests Jan - June 1983	Percent Change 1982-1983
Adams	50	33	-34.0
Amesbury	169	244	44.3
Attleboro	411	307	-25.3
Ayer	240	287	19.6
Barnstable	454	491	8.1
Boston	119	121	1.6
Brighton	108	105	-2.7
Brockton	462	502	8.6
Brookline	128	156	21.8
Cambridge	317	339	6.9
Charlestown	102	130	21.5
Chelsea	536	507	-5.4
Chicopee	86	87	1.1
Clinton	201	196	-2.4
Concord	438	380	-13.2
Dedham	350	460	31.4
Dorchester	138	174	26.1
Dudley	246	242	-1.6
East Boston	51	62	21.5
Edgartown	59	57	-3.3
Fall River	251	260	3.5
Fitchburg	173	80	-53.7
Framingham	446	443	-0.6
Gardner	124	141	13.7
Gloucester	125	170	36.0
Great Barrington	26	34	30.7
Greenfield	129	159	23.2
Haverhill	247	195	-21.0
Hingham	445	459	3.1
Holyoke	92	138	50.0
Ipswich	27	45	66.6
Lawrence	628	637	1.4
Lee	62	45	-27.4
Leominster	169	117	-30.7
Lowell	542	553	2.0
Lynn	321	336	4.6
Malden	292	245	-16.0
Marlborough	170	148	-12.9
Milford	223	170	-23.7
Nantucket	31	47	51.6
Natick	80	85	6.2
New Bedford	179	268	49.7
Newburyport	200	173	-13.5
Newton	156	124	-20.5
North Adams	85	98	15.2

DRUNK DRIVING ARRESTS BY COURT (cont'd)
JANUARY - JUNE 1982/1983
A COMPARISON

Court Name	Drunk Driving Arrests Jan - June 1982	Drunk Driving Arrests Jan - June 1983	Percent Change 1982-1983
Northampton	382	415	8.6
Orange	49	67	36.7
Orleans	216	196	-9.2
Palmer	212	249	17.4
Peabody	283	290	2.4
Pittsfield	149	181	21.5
Plymouth	250	204	-18.4
Quincy	630	565	-10.3
Roxbury	133	175	31.5
Salem	315	352	11.7
Somerville	209	167	-20.0
South Boston	55	64	16.3
Spencer	191	183	-4.2
Springfield	617	676	9.5
Stoughton	180	252	40.0
Taunton	372	440	18.2
Uxbridge	147	134	-8.8
Waltham	196	235	19.8
Ware	24	30	25.0
Wareham	313	313	0.0
West Roxbury	162	170	4.9
Westborough	185	231	24.8
Westfield	132	121	-8.3
Winchendon	18	10	-44.4
Woburn	305	273	-10.4
Worcester	723	450	-37.7
Wrentham	206	251	21.8
6-Month Total	16,542	16,744	1.2 %

Source: Office of the Commissioner of Probation

B. Roadblocks and Police Deployment

By this expression of concern, the Committee does not imply that public safety officials are not trying to develop innovative methods in trying to accomplish a climate of general deterrence. In this regard, the Committee has followed very closely the recently developed policy of selectively using traffic roadblocks to decrease the incidence of drunk driving.

Reports are encouraging that the roadblocks are effective in deterring drunk driving, however, the almost total absence of drunk driving arrests at the roadblocks is puzzling, particularly when viewed against what is known about the incidence of alcohol-impaired driving during the high risk nighttime weekend periods.

Reliable national studies have shown that between 10:00 PM and 3:00 AM on weekends, 13.5% of the drivers were at a 0.05% (BAC) or higher, and that 6.4% were at a 0.10% BAC or higher,[20] blood alcohols levels that would justify arrest in Massachusetts. Since no persuasive evidence has been presented to suggest that Massachusetts drivers drive more soberly than those tested in national samples, the Committee is understandably concerned that only three-tenths of one percent (0.3%) of those stopped at the roadblocks were arrested for driving under the influence, especially in consideration of the experience of other states which currently deploy roadblocks in the effort against drunk driving.

MASSACHUSETTS STATE POLICE
ROADBLOCKS*
July 2, 1983 - August 20, 1983

Date	Troop	Location	Cars Stopped	Total Arrests	Drunk Driving Arrests
7-2	A	Rte. 1A Salisbury	502	-	-
7-2	B	Rte. 9 Hadley	572	5	3
7-2	C	Rte. 146 Worcester	716	3	1
7-2	D	Rte. 53 Hanover	503	-	-
7-2	E	Trnpk. Int. 19 Brighton	894	2	1
7-3	B	Rte. 116 Sunderland	503	8	8
7-3	D	Rte. 6 Fairhaven	548	-	-
7-4	A	Rte. 114 Andover	587	-	-
7-17	A	Rte. 133 Georgetown	163	4	2
7-30	C	Rte. 9 Shrewsbury	800	5	4
8-6	D	Rte. 139 Randolph	429	2	2
8-13	D	Rte. 134 Dennis	692	-	-
8-20	C	Rtes. 12 & 20 Auburn	498	2	2
		TOTAL:	7,407	31	23

* Each roadblock utilizes 12-15 officers.

In Vermont, which has had several years experience with roadblocks, it is reported that 4% of the drivers stopped at roadblocks are arrested for drunk driving, a figure much more consistent with the national findings. It is also instructive to compare the Massachusetts experience with that achieved in Delaware, the state which pioneered the most recent use of roadblocks in the fight against drunk driving. Although early reports indicated that one out of ten drivers stopped at roadblocks in Delaware was arrested for drunk driving, an inquiry to the National Highway Traffic Safety Administration reveals that the numbers arrested are not quite so dramatic but still significantly better than those achieved in Massachusetts. For instance, in April of this year, Delaware deployed forty-six roadblocks with the following results:

7,147	drivers stopped
482	detained for further inquiry
162	arrested for DWI
55	arrested for other moving violations
10	arrested for other criminal acts

As such, Delaware arrested over 2% of those stopped for drunk driving offenses, and an additional 1% were arrested for other violations. These figures are roughly <u>six times</u> above the Massachusetts arrest rate.

If the abnormally low number of arrests occurring at the Massachusetts roadblocks are not sufficient in themselves to motivate local and state public safety officials to review their detection procedures, then a review of the arrest rate achieved by alcohol sensitive selective enforcement patrols should be decisive. Although the efficiency of these patrols is improving--and the patrols produce a very impressive number of moving violations--the number of drunk driving arrests is lower than might be expected. It should be noted that moving patrols only stop motorists when the officers have a reason to make the stop, usually because of errant driving behavior. Consequently, because alcohol impairment often produces erratic

driving behaviour, and since the patrols operate during the high risk hours, it is reasonable to expect a higher ratio of drunk driving arrests to stops than achieved thus far.

The Committee is pleased to report that Secretary Barry intends to resurrect the successful alcohol-crash reduction units of the State Police using $455,000 appropriated from federal highway safety funds available on October 1 of this year. The Committee applauds this initiative and believes that this will be an effective complement to the current policy of selective roadblocks. Drunk driving arrests are expected to increase.

C. Pre-Arrest Screening Issues

Other jurisdictions have found it helpful to provide continual training to their officers in the area of the initial inquiry stage. According to officials at the National Highway Traffic Safety Administration, some states have carefully crafted and implemented procedures to increase the proficiency of officers in administering "field sobriety tests." Additionally, within the past two years, thirteen states have enacted laws enabling police officers to request a suspect to take a preliminary breath test (PBT) at the roadside.

Under these PBT laws, if the officer has reason to believe that the suspect is impaired but is still uncertain, he may ask the suspect to take a PBT. A driver who refuses to take the test is subject to a fine within the framework of the implied consent law. If the driver takes the test, and the test is positive, the officer arrests him or her and requests an evidentiary implied consent test. From a police management perspective, such pre-arrest screening may reduce unwarranted arrests and unnecessary trips to the police station.

For the last two years, Vermont police have been allowed to use preliminary breath testing. The PBT instrument--costing $390.00--is about the size of a transistor radio and is carried in patrol cars. A suspected drunk driver is asked to blow into the instrument and the blood alcohol content of the suspect is digitally presented for use by the officer in making his decision to make the arrest. Since enactment of the PBT law, Vermont drunk driving arrests have increased 25% each year.

While the Committee reports on the use of preliminary breath tests in other states, it does not at this time propose to file legislation on the subject for two reasons: (1) Massachusetts police have not demonstrated they want or need such a tool, and (2) the U.S. Supreme Court has not yet ruled on the constitutionality of any of the existing PBT laws, challenges of which are working their way through the courts. In this regard, we note that the precedential law on blood testing has developed in a post-arrest setting and may not be controlling.*

Fortunately there are other less controversial roadway measures available and we are pleased that the State Police are actively exploring one of the more promising tests, the so called "Horizontal Gaze Nystagmus" test, an eye reaction test.[17] If this test is as reliable as early reports indicate, mechanical tests may not be necessary. The Committee will follow this development with keen interest.

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*Even though some legal scholars believe the sampling of deep lung air by modern PBT devices does not constitute a "search" (associating them with voice exemplars, handwriting samples and removal of cordite from under fingernails), their constitutionality may yet depend on a balancing test, and demonstrated police need must be part of that process. This issue should be examined in public safety circles.

II. THE JUDICIARY AND THE NEW DRUNK DRIVING LAW

By and large, the new DWI statute has been well-received by the Massachusetts bench. There have been exceptions, and while application of the law is not yet completely consistent throughout the court system, procedures are becoming routinized. Chief Justice Zoll of the District Court Department has convened a number of meetings of district court judges to discuss the implementation of the statute. As a result of these conferences, the Chief Justice issued Bulletin No. 2-83, an expansive set of guidelines and suggestions to assist the District Court Judiciary as they implement the new DWI statute.[24] This report references these efforts and in appropriate instances reacts by suggesting statutory remedies.

A. Trial Dispositions and Alcohol Education

Clearly, judicial behavior has begun to adapt to the changes mandated or permitted by the new DWI law. As the following table indicates, the "continuance without a finding" mechanism is being used more reservedly. In addition, an increase in the number of people being found guilty has been observed, increasing from 17% in 1981 to 23% in 1982.

DRUNK DRIVING DISPOSITIONS: 1977-1982[13]

Year	Continued W/O Finding		Guilty Findings		Not Guilty Findings		Total Dispositions
1977	14,008	(66%)	4,790	(23%)	2,463	(12%)	21,261
1978	12,469	(63%)	4,815	(24%)	2,603	(13%)	19,887
1979	14,134	(64%)	5,430	(24%)	2,655	(12%)	22,219
1980	15,392	(63%)	6,470	(27%)	2,405	(10%)	24,267
1981	18,911	(79%)	4,009	(17%)	848	(4%)	23,768
1982	17,362	(71%)	5,647	(23%)	1,323	(5%)	24,332

The decline in the percentage of offenders being referred to alcohol education programs continues, with the most recent

drop partially attributed to the statute's prohibition on assigning repeat offenders to such programs. A small part of the decrease has occured because some judges have become disenchanted with the health-legal system approach to the drunk driver and have opted to the more traditional fine and/or jail approach.

PROGRAM PLACEMENTS, FINES AND IMPRISONMENTS

1977-1982[13]

Year	Drivers Education Program		# Fined and/or Imprisoned	
1977	15,085	(88%)	1,562	(9%)
1978	15,426	(86%)	1,832	(10%)
1979	15,614	(83%)	2,587	(13%)
1980	16,379	(80%)	3,225	(16%)
1981	16,916	(78%)	3,421	(16%)
1982	17,092	(72%)	4,964	(21%)

But for the most part, where there have been judicial complaints about education and rehabilitation, the judges want better services, not the elimination of the rehabilitation system. And in some instances, judges in their desire to improve matters have decided to take a direct role in the design of the alcohol education program for their courts, some going so far as to dictate the content of the program and who is to perform the services.

While judicial frustration with what may be perceived as inadequate services is understandable, it is clear that the legislature in section 24D of C. 90 of the General Laws clearly wanted the Division of Alcoholism of the Department of Public Health to play the decisive role in the design of the education and rehabilitation system for the drunk driver. Aside from the fact that it makes good sense in terms of public policy--the Division of Alcoholism already has the mandate to develop comprehensive treatment systems--both the coercive nature of the drunk driver program and the danger that the drunk driver poses to the public require assurance that careful management

and evaluation of all drunk driving programs is present. Obviously, these activities are executive functions, and under our state's constitution, are reserved to the Executive Branch.

Although the three branches of government in discharging their legislative, executive, and judicial tasks perform acts reserved to other branches, such activities are usually incidental in nature and are done only to enable that branch to accomplish its appointed role. For instance, in the administration of the District Court Department, the Chief Justice must continually perform various executive functions. Such ancillary functions are certainly essential if courts are to carry out their constitutional mandates. But intrusion into the scope, design, cost, and management of the state's alcohol education and rehabilitation program is an action which is neither incidental to the administration of the court nor inherent to the exercise of the judicial role. Even under the most liberal interpretation of the sentencing powers of the courts, such clearly executive functions are not authorized by the Constitution of Massachusetts or by the legislature.

A reasonable solution to this conflict would be to enact amendments to the existing law which would more clearly specify that the Division of Alcoholism is responsible for implementing the education and rehabilitation system, but also that the Division must meet and consult with a committee of judges appointed by the Chief Justice of the District Court Department for that purpose. In this way, judges would have the opportunity to express their legitimate concerns and the Division would benefit from the considerable experience and knowledge of interested jurists.

B. Procedural Issues

Since the June 7, 1983 decision of the Supreme Judicial Court in Commonwealth v. Murphy, 389 Mass. 316, the right of

the legislature to prescribe enhanced penalties for repeat drunk drivers has been affirmed and clarified. With many of the doubts about the second and multiple offender provisions of the law set aside by the Murphy case, the Committee expects the rate of prosecution for such repeat offenders to increase. In recognition of this increased activity, the Committee believes that certain procedural changes in the complaint process for second and multiple offenders is in order at this time.

Since the Court Reorganization Act of 1978 eliminated the right to a de novo trial in the Superior Court and created the present two-tiered District Court system, when and how to charge second or multiple offenders requires considerable care on the part of prosecutors. Defendants are now entitled to a trial by a District Court jury of six in the first instance. Alternatively, a defendant may waive his right to a first instance jury trial and elect to be tried by a judge of the District Court. He may then appeal a guilty finding to the District Court jury of six session, unless he once again waives his or her right to a jury trial and elects to be tried by a second judge.

The matter is further complicated if the prosecutor does not have enough information, i.e. probable cause, to charge the individual as a repeat offender when the application for complaint on the immediate offense is heard. The difficulty increases if the defendant seeks a jury trial in the first instance and the case is transferred to a different court. Some judges do not believe that at that stage the complaint can be withdrawn in favor of a new multiple-count complaint. To decrease the likelihood that repeat drunk drivers will escape prosecution as such because of procedural inadvertance, the Committee recommends that the complaint process be initiated and completed in the primary court and the Committee Chairman will file the necessary legislation to accomplish that goal.

Another matter touching upon the successful prosecution of second offenders is the possibility that certain offenders who previously had their cases continued without a finding had their records sealed. To prevent this from occurring in future cases, the Committee Chairman will file legislation providing that in any case where there is no conviction and is disposed of under the provision of the drunk driving law (except where the person is found not guilty), the record of the person shall not be sealed for a period of ten years notwithstanding the provisions of section 100C of Chapter 267, the state's sealing statute. This is consistent with the recommendations of the Commissioner of Probation and will greatly simplify the identification of multiple offenders.

III. JAIL OVERCROWDING AND THE DRUNK DRIVER

Considerable attention has focused on the overcrowded conditions of the county houses of corrections where, by statute, the sentences of those jailed at those facilities may not exceed 2 1/2 years. Reports in the media have suggested that the year-old policy of jailing second offender drunk drivers is disproportionately aggravating an already serious problem. Two months ago, it was reported that drunken drivers now represent 20% of the total county prison population and that this population is the cause of overcrowding in these facilities.[21]

A number of county sheriffs and state officials represent that the drunk driver is a discrete population which is significantly different from the general population jailed in county facilities. As a response to these assertions, the Governor's Anti-Crime Council is currently considering the establishment of three one hundred-bed regional centers to incarcerate drunk drivers. As conceived, the three regional centers would be innovative for this state in that incarceration and meaningful rehabilitation would be combined. Because these would be state-run facilities, the counties would benefit with a cost-reduction and some relief from overcrowding would be achieved. Not suprisingly, county sheriffs enthusiastically endorse this proposal.

While sympathetic to the difficult task facing the State's sheriffs because of jail overcrowding, the Committee does not accept the argument that the drunk driver is the principle cause of such overcrowding. Nor is it the position of the Committee that multiple offender drunk drivers are so different from the general prison population as to warrant segregation in special regional facilities. However, the Committee <u>does endorse</u> the creation of three regional minimum security facilities with adequate rehabilitation capabilities, provided that entrance to those facilities is not limited to drunk

drivers. The Committee does not mean to imply that some drunk drivers do not belong in the regional centers; however, it does believe correctional officials should develop a plan which would allow selection from all types of offenses where alcohol is a factor.

When the Committee contacted all the sheriffs to assess the impact the new drunk driving law was having on their operation, it was pleased to confirm that the number of drunk drivers had doubled since the enactment of the law. County sheriffs estimated that on September 4, 1982, three days after the enactment of Ch. 373, there were approximately 121 drunk drivers incarcerated in county houses of correction. On April 2, 1983, seven months after the law's enactment, there were 253 DWI offenders in jail.

However, the research also found that statewide, slightly less than 10% of those jailed on a selected week-end were drunk drivers, with 253 offenders out of a total population of 2,647 offenders being held for drunk driving. In independent surveys by the Department of Corrections at later dates, the number of offenders being held for this offense was very close to the number found by Committee staff.

What gave rise to the belief that drunk drivers now comprise 20% of the population in county jails may be explained by two factors: First, in two counties, Middlesex and Norfolk, the percentage of drunk drivers is at or near 20% and it appears that 24% of all commitments to all facilities are for drunk driving. With reference to the latter point, the number of beds on a given day occupied by drunk drivers should be the focus of inquiry. Because of the significantly shorter sentences handed down to DWI offenders, the volume of commitments is not controlling when assessing factors which affect the issue of overcrowding.

For instance, if in a 100-bed institution 90 beds were occupied by the general population whose average sentence was 120 days and 10 beds were occupied for drunk drivers whose average sentence was 20 days, the drunk driving beds could accomodate 18 offenders during the year whereas the general population beds would be available for only three inmates. Thus, ten drunk driving beds could accommodate 180 such offenders, but the remaining 90 beds could serve only 270 general population offenders on an annual basis.

Obviously, a small number of beds is sufficient to house a large number of drunk driving commitments because of the much shorter sentences. As to the situation in Middlesex and Norfolk, temporary releif may be gained if judges in those jurisdictions use their considerable sentencing discretion to persuade second offender drunk drivers, as permitted by present law, to elect to go to Rutland Hospital for 14 days in lieu of going to jail. The Governor and the Public Safety Secretary have already undertaken to persuade judges to do that with salutary effect.

Second, the Committee is not persuaded that the second or multiple offender drunk driver is so different from other offenders in houses of correction that they warrant less onerous sentencing. The Committee believes this now and it held that opinion firmly when it first recommended incarceration for second offenders in its February, 1982 report.[22] At that time, the data presented indicated that at least one-third of the drunk driving population would have prior criminal records, and those records would have frequent arrest entries for crimes which prompt judges to send offenders to houses of correction. Additionally, the Committee remains convinced that a small core of seemingly sociopathic persons are responsible for a grossly disproportionate number of incidences of recidivism. A thorough research effort by the Division of Alcoholism, reported upon in the Committee's

earlier reports, indicated that 7% of drunk driving offenders are responsible for roughly half of all repeat offenses.[18]

No evidence has been produced in the interim to suggest that the vast majority of second and multiple offenders possess such tender sensibilities that they would be irreparably injured if exposed to jail life. Indeed, it appears that a joint study currently being done by the Division of Alcoholism and the Office of the Commissioner of Probation will again confirm that the repeat offender is a distinct threat to the public safety and jail is as appropriate for him as other criminals. The Committee acknowledges that in some instances jail may be inappropriate, but this is also true for other types of crimes where judges feel detention is called for. Thus, the Committee holds that the proposed regional centers should be open to all classes of alcohol-related offenses where punishment coupled with intensive rehabilitation is available rather than being limited to drunk drivers.

Finally, if one recognizes that 86% of all those sentenced to the Houses of Corrections are there for committing crimes against property, then perhaps it is time to make some room for those who demonstrably perpetrate more harm to life and property than perhaps any other segment of society. A review of the criminal records of the multiple offender drunk driver and their at-fault accident experience should be sufficient to illustrate the point that they collectively injure more lives and destroy more property than any other class of offenders.

COUNTY	HOUSE OF CORRECTION CENSUS ON 9/4/82 TOTAL POPULATION SENTENCED	DRUNK DRIVERS SENTENCED	DRUNK DRIVERS AS A % OF THOSE SENTENCED	HOUSE OF CORRECTION CENSUS ON 4/2/83* TOTAL POPULATION SENTENCED	DRUNK DRIVERS SENTENCED	DRUNK DRIVERS AS A % OF THOSE SENTENCED
Barnstable	104	4	4 %	97	7	7 %
Berkshire***						
Bristol	186	7	4 %	182	21	12 %
Dukes	13	0	--	9	0	--
Essex	176	4	2 %	150	7	5 %
Franklin	47	4	9 %	67	4	6 %
Hampden	411	4	1 %	393	13	3 %
Hampshire	88	0	--	86	3	3 %
Middlesex	445	32	7 %	532	91	17 %
Nantucket***						
Norfolk	128	26**	20 %	165	38**	23 %
Plymouth	203	13	6 %	230	24	10 %
Suffolk	386	15	4 %	399	10	2.5 %
Worcester	290	12	4 %	337	35	10 %
TOTAL	2,477	121	5 %	2,647	253	10 %

* Source: Post Audit Survey

** Estimate for that date

*** No response

INDIVIDUALS SERVING SENTENCES FOR OUI ON APRIL 21, 1983*

HOUSES OF CORRECTION

Institution	No. on 4/21/83	Estimate of Highest No. to Date
Barnstable	8	8
Berkshire	7	11
Bristol	23	23
Dukes	0	1
Essex: Salem	11	11
Essex: Lawrence	4	7-8
Essex: CAC	22	32
Franklin	4	4-5
Hampden	10	10-12
Hampshire	4	6
Middlesex	44**	70-75
Norfolk	26	26
Plymouth	24	30
Suffolk: Charles St.	0	1-2
Suffolk: Deer Island	22	55
Worcester	27	35-40
TOTAL	236	330-345

* Does not include 24 persons who were serving weekend sentences

** Estimate

Source: Telephone Survey, Department of Corrections

THE NUMBER OF DRUNK DRIVERS BEING HELD IN COUNTY FACILITIES ON AUGUST 6, 1983

County	Number Serving Sentences	Number of Weekenders	Total
Barnstable	13	0	13
Billerica	39	9	48
Berkshire	3	3	6
Bristol	9	2	11
Salem	8	0	8
Lawrence	24	0	24
Franklin	7	1	8
Lawrence CAC	21	1	22
Hampden	20	0	20
Hampshire	4	1	5
E. Cambridge Jail*			
Norfolk	37	0	37
Plymouth	21	1	22
Worcester	21	2	23
Deer Island	13	1	14
TOTAL	240	21	261

Source: Department of Corrections

* No Response

IV. THE 14-DAY RESIDENTIAL TREATMENT PROGRAM: AN ALTERNATIVE TO JAIL FOR THE SECOND OFFENDER

Under C. 373, judges may--with the defendant's consent--place second offenders on probation in lieu of a seven-day jail sentence provided that a condition of probation is confinement for no less than fourteen consecutive days in a residential treatment program. This option is also available to judges when dealing with first offenders, but the law precludes such treatment when dealing with a defendant with more than one prior offense.

Originally conceived as a more effective way of addressing the alcohol-related problems of second offender drunk drivers, the 14-day program is now being advanced as a solution to the overcrowding problem in sorely taxed county facilities. The Committee accepts both reasons as a valid justification for the operation of the state's one functioning program at Rutland Heights Hospital.

Operated by the Division of Alcoholism, Rutland can currently accomodate 88 offenders, with an eventual bed capacity of 131. Operational since October, 1982, the program has served 810 offenders as of July 18, 1983. Almost 80% of those assigned by the court have paid or will pay the fee of $380. At present capacity, Rutland can serve 2,200 annual referrals. If the Certificate of Need for bed expansion is granted, the program will be able to accomodate 3,400 clients per year, an appreciable number of the projected second offender population.

While the Rutland program is now operating at full capacity (88 beds with a waiting list), it is only recently that judges are using their discretionary sentencing powers to persuade offenders to choose Rutland instead of jail. After the Governor wrote on June 7, 1983 to all the District Courts, referrals increased significantly. Efforts such as these by

separate branches of government are necessary if progress is to be made in the war against drunk driving.

That a large number of second offenders would choose seven days in jail over 14 days of rehabilitation does not surprise the Committee. The shorter term and the cost are obvious factors, but what may be more important is an awareness on the part of the Committee that a significant number of second offenders have frequent contact with the law outside the area of driving. To these offenders in particular, seven days in a county correctional facility is no great deterrent. In this regard, the Committee underscores the fact that the seven-day minimum is just the minimal sentence that can be meted out. Prior criminal activity outside the drunk driving area should be relevant when determining the length of sentence for these offenders.

If the shortness of the jail term is enough to influence offenders to choose jail over Rutland, then the ability to serve their time over the course of a few weekends must be irresistable. According to Department of Corrections officials, approximately 10% of the drunk driving population sentenced to jail serve their time on a weekend basis. Correctional officials inform Committee staff that these weekenders present considerable problems because they are often coerced by other inmates to smuggle contraband back into the facility. For all of these reasons, the Committee Chairman will file legislation to the effect that the minimum sentences created by C. 373 will be served on a consecutive basis.

Additionally, the Committee believes that before the 14-day residential program is opened to private vendors or expanded to other sites, considerable evaulation of its present operation should occur. Until effectiveness is demonstrated, jail should remain a viable option for the court in determining the sentence for a multiple offender.

V. ALCOHOL EDUCATION AND THE FIRST OFFENDER

Before the enactment of Chapter 373, most first offenders were assigned to alcohol education programs as part of the sanctioning process. A $200 fee was prescribed with the money collected by the court to be deposited into a trust fund account in the Treasurer's Office. These monies were dedicated to support the programs under the supervision of the Division of Alcoholism. The Division contracted with vendors who were paid to provide alcohol education to all offenders. In many instances, further services were provided to clients who were deemed to be in need of more intensive rehabilitation services. Under the trust fund concept, additional appropriations were not needed to support the first offender program, even though on average only $165 of the $200 prescribed fee was collected because of the law's provision for indigence.

Following the enactment of Ch. 373, the first offender alcohol education programs were freed from direct financial control by a state agency. Under current law, a first offender who has been found guilty or whose case has been continued without a finding is now required to pay $280 directly to the individual vendor/provider. If the offender is found to be in need of services beyond alcohol education, those services are subject to additional charges. Where indigence is a factor, all of the costs must be paid out of the budget of the Division of Alcoholism.

Because the alcohol education programs must now collect their own fees, some have experienced serious cash flow problems, particularly in communities where unemployment is high. These programs experience a higher rate of delayed payment and deal with a large number of indigent clients. At this time, adequate provision for indigence has not been addressed by either the courts or the Division of Alcoholism.

One of the major reasons for the elimination of the trust fund was that the monies collected and spent were beyond the reach of the annual appropriation process, a result--in the opinion of some legislators--which was both illegal and undesirable. Another factor was the use of surplus funds to provide services to indigents. Some legislators felt that the offenders who paid fines, counsel fees, and program costs should not have to subsidize others who do not or cannot pay. Thus, offenders can now only be assessed a fee which does not exceed the actual cost per client treated.

While the fiscal difficulties of some alcohol education programs are sufficient in themselves to threaten the stability of the first-offender programs in certain parts of the state, the primary concern of the Committee is the increasing likelihood that the Division of Alcoholism will lose effective administrative and programmatic control of these programs. This unwanted result may occur in spite of the clear legislative intent that the Division of Alcoholism be the overseer of this program, an intent that has been consistently reaffirmed each time section 24 of Chapter 90 has been amended, starting with C. 647 of the Acts of 1974.

It is clear that when the trust fund was eliminated, the legislature did not mean to signal the end of effective supervision by the Division of Alcoholism. However, with the loss of fiscal control has come an increasing tendency of both judges and program providers to negotiate their own arrangements without regard to the program policies of the Division of Alcoholism. These arrangements include:

- the designation of special diagnostic tests, some costing $150 per client;
- the restructuring of the length and scope of the alcohol education programs;
- the by-passing of alcohol education entirely in favor of other treatment of a significant portion of the caseload;

- the mandate that numerous offenders attend a designated number of meetings of Alcoholics Anonymous; and

- meetings with paid monitors to assure attendance at the programs.

On the last point, the Committee seriously questions the wisdom of such practices, noting that it is quite different from the situation where active members of Alcoholics Anonymous bring the message of their programs to inhabitants of prisons, hospitals and rehabilitation centers. The widespread use of paid monitors to check the attendance of a large, coerced population could be unduly invasive of the rights of this valued self-help group. In making these observations, the Committee emphasizes that it has absolutely no desire to instruct members of Alcoholics Anonymous or any other voluntary organization as to what is good policy for their groups.

It is evident that the vendors of the services required by a large, involuntary client population should in themselves not control the scope and the magnitude of the program. In many instances, the vendors could be in a hopeless conflict of interest or would be giving the appearance of such a conflict. And for reasons which have already been described in Section III, reliance on the courts for policy and management of these programs is inappropriate.

Therefore, the Committee reiterates its desire to clarify the responsibility of the Division of Alcoholism and the Chairman will attempt to do so by filing an amendment restoring fiscal control to the division. However, the legislation will not suggest the resurrection of the trust fund concept. Instead, it recommends that the court should collect the fees, remit them to the General Fund, and that the Division of Alcoholism should contract for the needed services subject to the annual appropriation process. It is believed that this will be the most effective method of restoring needed supervision by this highly professional state agency.

Prior to making these recommendations, Committee staff held extensive meetings with Division of Alcoholism managers to explore changes made by the Division after the enactment of C. 373.* Some of the changes were mandated by the statute; others were prompted by a recognition that the alcohol education system needed revision and improvement. In making changes in program policies and procedures, the Division used an approach in which substantial vendor participation was solicited. Significantly, a series of Division of Alcoholism/Office of Probation workshops were conducted to describe the Driver Alcohol Education Treatment and Rehabilitation process. The major changes made in the program during the past year were as follows:

a) diagnostic criteria were standardized;

b) a Driver Alcohol Education Task Force designed a Court Reporting Form;

c) the number of diagnositc sessions were increased; and

d) aftercare management was implemented.

The improvements made by the Division in the first offender program and the consultative process followed by it are to be applauded. These actions indicate that the Division is keenly aware that some judges want more and better services and that the programs can indeed be improved. Because of the responsibility borne by the courts in dealing with the drunk driver, it is only good policy to respond to the legitimate concerns of the judiciary. To insure that this takes place, the Committee Chairman will sponsor an amendment to section 24D of C. 90 requiring the Division of Alcoholism to consult with a committee of judges to be appointed by the Chief Justice of the District Courts.

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*The Division's response to the Committee's inquiry on the first offender program is included in this report as Appendix A.

VI. MOTOR VEHICLE HOMICIDE WHILE UNDER THE INFLUENCE OF INTOXICANTS

When the legislature enacted C. 373 it also changed the penalty for causing a death while operating a motor vehicle while under the influence of liquor. One of the changes was achieved with the following clause (S. 24G (a), C. 90):

> "the sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, or furlough or receive any deduction from his sentence;"

It is clear that by this language the legislature intended to require an offender convicted of causing a homicide while operating a motor vehicle under the influence to receive and serve a sentence of at least one year duration. However, in one instance where a judge sentenced a person so convicted to a ten-year sentence, a question arose as to whether that person must serve the entire ten years without possibility of parole, furlough, or early release. Until that time, the provision had been interpreted by the courts to mean only that the offender serve at least one year before the person would be eligible for any type of release. In cases where a longer sentence was given, the normal parole eligibility would determine when the person would be released after the one-year period has been served.

A review of Committee files and consultation with other parties involved in the drafting of C. 373 leads the Committee to concur with the above interpretation. Although the Committee holds that the legislative intent to restrict any release until at least one year has been served could be deduced from the clause as written, it does believe that good oversight practice would include a clearer expression of what the legislature wanted. This goal could be achieved by an

amendment which would have the controling clause read as follows:

> "nor shall any person convicted under this subsection be eligible for probation, parole, or furlough or receive any deduction from his sentence, <u>until he has served at least one year of such sentence</u>;"

VII. THE FEDERAL ALCOHOL TRAFFIC SAFETY INCENTIVE GRANT PROGRAM

Last January the Committee reported that the Commonwealth could not qualify for funding under the incentive program created by the Congress in December of 1982 when it enacted Public Law 97-364 (23 U.S.C.408). Known as the Alcohol Traffic Safety Incentive Grant Program or as the Section 408 program, the Act was intended to use incentive money to encourage states to expand their efforts to deter drunk driving.

To determine whether a state qualifies for the incentive program, a state must demonstrate that it has met the minimum criteria for a basic grant discussed in detail in the Committee's earlier report.[23] Having met the basic criteria for a basic grant, the state would then be eligible for a supplementary grant if it met at least 8 of 21 additional criteria set forth in regulations issued by the Secretary of Transportation.

In spite of the fact that during the last year 35 states toughened their drunk driving laws,[19] since January of this year when the final regulations were issued, only <u>two states</u>, Delaware and North Dakota, have qualified for participation in the federal incentive program. The inflexibility of the basic federal criteria has prevented the Commonwealth from receiving approximately $990,000 that could have been used to increase local efforts to combat drunk driving. This loss continues despite the fact the Committee sought and received the assistance of some members of the Massachusetts congressional delegation. Apparently, the Congress is not presently disposed to make needed changes in a recently enacted law, even though there is increasing evidence that most states will not be able to meet the stated goals. This appears to be yet another example of the current federal administration's preference for rhetoric over performance, and millions of dollars remain unspent.

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The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND EIGHTY

APPENDIX I

AN ACT TO IMPROVE THE ADMINISTRATION OF THE DRUNK DRIVING LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Subdivision (a) (1) of section 24 of chapter 90 of the general laws, as most recently amended by section 1 of chapter 373 of the acts of 1982, is hereby amended by striking the fifth and sixth paragraphs and inserting in place thereof the following paragraphs:-

If a defendant waives right to a jury trial pursuant to section twenty-six A of chapter two hundred and eighteen on a complaint under this subdivision then at any time before the commencement of trial or acceptance of a plea on a complaint alleging a violation of this subparagraph, the prosecutor may move for the dismissal of the complaint and the issuance of a new complaint alleging a violation of this subparagraph and one or more prior like violations. After a hearing and a finding of probable cause, the court may order the issuance of said complaint. If a new complaint is issued, the court shall order that further proceedings on the matter be postponed until the defendant has had sufficient time to prepare a

defense. If a defendant makes such waiver of a jury trial he shall be deemed to have waived right to a jury trial on all elements of said complaint subject to the right to appeal pursuant to section twenty-seven A of said chapter two hundred and eighteen.

If a defendant does not waive right to a jury trial on a complaint under this subdivision, the court shall inquire whether the prosecutor intends to request dismissal and the issuance of a new complaint before transferring a case to a jury session for trial. If the prosecutor does so intend, the case shall be held for a reasonable time until the probable cause hearing on the issuance of the new complaint is completed. After a hearing and a finding of probable cause, the court may order the issuance of said complaint and then transfer the case to the jury session.

Section (2) Subdivision (a) (3) of said section 24 of said chapter 90, as so amended, is hereby amended by striking it out in its entirety:

Section (3) Section 24D of said chapter 90, as most recently amended by section 6 of chapter 373 of the acts of 1982 is hereby amended by inserting after the second paragraph the following new paragraph:-

Any case wherein there is no conviction and is disposed of under the provisions of this section, except a case wherein the person is not found guilty shall not be eligible to be sealed for a period of ten years notwithstanding the provisions of section 100C of chapter 276.

Section (4) Said section 24D of said chapter 90, as so amended, is hereby further amended by adding to the fifth paragraph the following sentence:-

The director shall meet at least quarterly with a committee of judges to be appointed by the chief justice district court division, with one judge to be selected by the chief justice of the boston municipal court, to discuss the scope and quality of said driver alcohol education programs.

Section (5) Said section 24 D of said chapter 90, as so amended, is hereby further amended by striking out the seventh paragraph and inserting in place thereof the following paragraph:-

Beginning March 1, 1984, each person placed in a program of alcohol education program pursuant to this section shall pay a fee to the chief probation of the court, and all such fees shall be deposited with the state treasurer, subject to appropriation for the support of such alcohol education programs. Until such date, the program fees shall be paid directly to the alcohol education program in an amount to be determined by the director of the division of alcoholism. Should the court deem it necessary for the person to seek additional alcohol treatment and/or rehabilitation services, after completion of the alcohol education program, the fees for such services shall be paid directly to the provider programs of such services. The director shall establish and may from time to time revise a schedule of uniform fees to be charged by all such programs which shall not exceed the actual cost per client of running said programs after notice and a public hearing. The division shall promulgate regulations relative to the methodology of setting such fees. No person may be excluded from a program for inability to pay the stated fee, provided that such person files an affidavit of indigency or inability to pay with the court within ten days of the date of disposition, that investigation by the probation officer confirms such indigency or establishes that the payment of such fee would cause a grave and serious hardship to such individual or to the family of such individual, and that the court enters a written finding thereof. In lieu of waiver of the entire amount of said fee, the court may direct such individual to make partial or installment payments of such fee when appropriate. Subject to appropriation, the division shall reimburse each program for the costs of services provided to persons for whom payment of a fee has been waived on the grounds of indigency.

Section (6) Subsection (a) of section 24G of said chapter 90, as most recently amended by section 1 of chapter 376 of the acts of 1982, is hereby amended by inserting after the word "sentence" in line fifteen, the words:-

until such person has served at least one year of such sentence.

APPENDIX II

DESCRIPTION OF DUIL ACTIVITY

M.G.L. 373, Acts of 1982 charges the Division of Alcoholism (Department of Public Health) with the responsibility to a.) promulgate regulations for a fourteen day residential treatment program; b.) establish and administer driver alcohol education programs; c.) establish a schedule of uniform fees to be charged by such programs; and d.) promulgate regulations relative to the methodology of setting such fees. Furthermore, the Division of Alcoholism is required to approve alcohol treatment and rehabilitation programs utilized under the provisions of Chapter 24D and to annually prepare and publish a list of accepted programs.

Following is a summary of Division activity as it relates to Chapter 373. The activities are described under the following headings: Program Development, Interdepartmental Coordination, and Health Education. Since the supporting documents contain background information and a detailed description of the pertinent process, the narrative is used to provide a conceptual cohesion to the description.

PROGRAM DEVELOPMENT

The overall goal of drunk driving efforts is the enhancement of public safety. Methodology utilized to achieve this goal include identification of persons with alcohol problems, intervening to assist these clients to own their problems, and providing treatment to assist these clients to cope with their problems.

A. Revision of Driver Alcohol Education Program Services.

Driver Alcohol Education Programs were revised in the following manner:

a.) diagnostic criteria were standardized;
b.) a Driver Alcohol Education Task Force designed a Court Reporting Form;
c.) the number of diagnostic sessions were increased; and
d.) aftercare management was implemented.

1. Diagnostic Criteria and Reporting Form

In discussions with providers of alcoholism services, members of the judiciary and probation officers, the Division noted that the types of evaluations done by the Driver Alcohol Education Programs and the format for reporting evaluative findings to courts varied greatly from program to program. Some placed a greater emphasis on clinical assessment and diagnosis and this was reflected in their court reports. The percentage of clients diagnosed as having alcohol problems varied from program to program which indicated different diagnostic criteria were being used. These observations led the Division to reshape the Phase I model of care to reflect a renewed emphasis on clinical diagnosis using standardized diagnostic criteria and standardized reporting procedures.

To achieve this end, a Driver Alcohol Education Program Task Force consisting of Driver Alcohol Education Program program directors was formed to develop diagnostic instruments and court reporting forms. See Appendix A1 for a copy of the forms.

2. Increased Evaluation Sessions

The components of the Driver Alcohol Education Program were modified to increase the diagnostic evaluation sessions from two individual sessions to three. The additional session provides another opportunity for one-on-one counselor/client interaction and application of diagnostic techniques. To achieve a greater emphasis on diagnosis, the number of group sessions remain the same.

3. Aftercare Management

Another change in the model involved the addition of an aftercare management component for all clients completing the diagnostic and educational parts of the program. The role of the aftercare manager is to monitor all clients until their period of probation is over and to provide timely reports to the Probation Department regarding a client's involvement in treatment. Other roles would involve providing consultative services to judges, lawyers, and Probation with regard to alcohol issues and providing a linkage between the treatment network in the community and the Probation Department. The nature and frequency of the supervision/monitoring provided by the aftercare manager is determined by the level of risk of recidivism presented by the client.

A copy of the job description and Driver Alcohol Task Force standards and guidelines developed for aftercare management can be found in Appendix A2.

B. Integration of DUIL Offenders into Alcohol Treatment Programs

DUIL offenders adjudicated under Chapter 373, Section 24D will be integrated in the alcohol treatment service system. To accomplish this end, the Division of Alcoholism has a.) replaced the Phase II programs; b.) developed standards and guidelines for participating treatment and rehabilitation programs; c.) designed and implemented an application and treatment process; and d.) prepared and published a directory of accepted programs.

1. Replacement of Phase II Programs

In fiscal year 1984, separate contracts were not offered for Phase II services. The rationale for this change is that not all clients are alike. Clients present different kinds of problems and a range of treatment needs. Treatment planning must address the individual needs of a particular person and should be tailored accordingly. Some providers will continue to offer services which are similar to those of the original Phase II model, in that they are specialized services for the DWI client. But with the increased emphasis on more individualized treatment planning, there will be a greater reliance on existing treatment resources in the community for providing services for DWI clients. Under the new law, clients must directly pay the agencies for these services.

2. Standards and Guidelines/Application and Acceptance

In addition to the Division's Standards and Guidelines for Outpatient Programs (Appendix A3) which have generic application to 24D programs, standards and guidelines for the first offender outpatient treatment programs were developed. The application and acceptance process was described to providers in January, 1983 (See Appendix A4)

3. Directory of Accepted Programs

Under the new law, the Division has the responsibility for developing a directory of approved treatment programs for DWI first offenders. (See Appendix A5)

C. Establishment of a Fourteen Day Residental Program.

Section 2 of the new law states that "...a condition of such probation shall be that the defendant be confined for no less than fourteen days in a residential alcohol treatment program as provided or sanctioned by the Division of Alcoholism, pursuant to regulations to be promulgated by said Division in consultation with the Department of Correction and with the approval of the Secretary of Human Services..."

The Division has approved three programs as fourteen day treatment programs; e.g., Rutland Heights Hospital, Essex County House of Correction, and Lancaster PreRelease Program. Only the Rutland program has become operational. A copy of the Rules and Regulations for the Approval of Residential Alcohol Treatment Programs for Operating Under the Influence Offenders, a description of the program, and information on fees can be found in Appendix A6.

The Division participated in the screening and selection of staff for Rutland Heights Hospital. Presently, the hospital can accommodate 88 DUIL offenders with an eventual capacity of 131 client population. A description of the Rutland Hospital program can be found in Appendix A7.

D. Fees and Collection Activity.

The Division has developed regulations for fees which conform to the Rate Setting Commission methodology. See Methodology for Fee Setting in Appendix A8. Under Chapter 373, DUIL offenders pay directly to the programs for services received. The Alcoholism Trust Fund which previously covered these charges has been approved for the following purpose:

> To cover the cost of indigent first offenders arrested and assigned after September 1, 1982 to driver alcohol education programs, alcohol treatment or rehabilitation programs, or residential alcohol treatment programs under Chapter 90, Sections 24 and 24D of the Massachusetts General Laws.

INTERDEPARTMENTAL COORDINATION

Implementation of Chapter 373 and "enhancement of public safety" requires the communication, coordination, and cooperation of several agencies, particularly units within the Department of Public Health, Probation, Rate Setting Commission, Executive Office of Human Services, and provider groups.

As previously described, Department of Public Health, Executive Office of Human Services, and Rate Setting Commission played roles in promulgating regulations and establishing rates. Cognizant of the crucial role of the probation officer in DUIL offender process, a series of Division of Alcoholism Office of Probation Workshops were conducted to describe the Driver Alcohol Education Treatment and Rehabilitation process. A copy of the workshop schedule can be found in Appendix B1. Key issues raised in the workshop were:

- role of the aftercare manager
- goals of the Department of Alcohol Education Treatment and Rehabilitation Programs
- use of the Trust Fund

The Driver Alcohol Education Task Force has been mentioned previously. These providers came together orginally to develop standardized criteria. After completing that task, other areas to address were identified; i.e., aftercare management and curricula.

HEALTH EDUCATION/PREVENTION ACTIVITIES

Some of the key elements of the Divisions health education activities relating to drunken driving are the following:

a.) organizing a public interest coalition
b.) Prom Campaign
c.) media promotion
d.) advertising via the Goodyear blimp, taxi cabs, billboards and Red Sox and Patriots' scoreboards and booklets.

The Division of Alcoholism convened the Coalition To Reduce Drunken Driving (CORDD) which brought together a broad range of agencies, both public and private, concerned with the issue of drinking and driving, specifically in four areas: media, education, legislation, and law enforcement. The Coalition includes representatives from the regional Prevention Centers, Department of Education, National Council on Alcoholism, Driver Alcohol Education Programs, American Automobile Association, Professional Driver Education Association of Massachusetts, Mothers Against Drunk Driving (MADD), Students Against Driving Drunk (SADD), National Highway Traffic Safety Administration, the Governor's Highway Safety Bureau, the Department of Public Safety and the Division of Alcoholism. The primary goals of CORDD are to keep the issue of drinking and driving before the public; to eliminate the duplication and fragmentation of concerned agencies within the public and private sectors; and to serve as a centralized clearing house for information. Some of the activities planned for next year are to sponsor a statewide conference on drinking and driving; to launch a media and billboard campaign on the new drunk driving legislation; and to maintain a presence in terms of lobbying for or against pertinent legislation.

A copy of CORDD recommendations can be found in Appendix C1.

Information on and samples of the aforementioned health education activities can be found in Appendix C2 and C3. In its evaluation of the NIAAA's alcohol abuse prevention campaign, Kappa Systems, Inc. reported Boston as having one of the top five alcohol education/media networks in the nation. This was exemplified by high market saturation of information. According to Kappa Systems, Inc., Boston was third in the percent of youth exposed to the youth alcoholism campaign and fourth among markets with high exposure of women to women's campaign. Overall, only one media market had a higher estimated frequency of viewing of the alcohol public service announcements. That was a viewing frequency of 6.1 in Norfolk compared to 6.0 in Boston.

DATA COLLECTION/RESEARCH

1. Management Information Systems

The implementation of the Division's management information system provides information on all admissions and terminations from Department of Driver Alcohol Education Programs. The syst em provides a variety of outputs including utilization statistics, client profile data, admission and discharge data. Selected reports are included in Appendix D1.

2. Research

The Division has engaged the Alcohol Research Center to assess and profile recidivism characteristics of clients arrested since passage of Chapter 373.

RECOMMENDATION

The Division of Alcoholism strongly supports the restoration of a central fund to reimburse providers for Driver Alcohol Education Services. We recommend this policy in order to assist programs with cash flow difficulties caused by the current direct payment mechanism and to strengthen the Division's managerial role with respect to the provider network.